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No. 10-

IN THE

Supreme Court of the United States

JAMES E. JACKSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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September 17, 2010

QUESTIONS PRESENTED

1. What is the jurisdictional reach of the False Statements Act, 18 U.S.C. § 1001?

2. Is the submission of false timesheets by an employee to his private employer, a subcontractor to a prime contractor on a government contract, within the jurisdiction of the United States for purposes of a prosecution under the False Statements Act, when those timesheets submitted by the employee were never presented to nor seen by a single government official?

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James E. Jackson ("Petitioner"), petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The Opinion of the United States Court of Appeals for the Fourth Circuit is reported at 608 F.3d 193 (4th Cir. 2010) and is reproduced in the Appendix at App. 1.

JURISDICTION

The opinion and judgment of the United States Court of Appeals for the Fourth Circuit were entered on June 24, 2010. This Petition is filed within 90 days of that judgment pursuant to Supreme Court Rule 13.1. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

18 U.S.C. § 1001

18 U.S.C. § 1001 provides that whoever knowingly and willfully makes a material false statement "in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the

United States" shall be fined under Title 18 of the United States Code and imprisoned up to five years. 18 U.S.C. § 1001(a).

STATEMENT OF THE CASE

I. Statement of Facts.

In or about July 2003, the National Security Agency ("NSA") contracted with Computer Sciences Corporation ("CSC") to obtain certain messaging services. (App. 3) NSA is a component of the Department of Defense, part of the Executive branch of the United States government. (*Id.*) CSC is a private government contractor. (App. 1)

CSC had also entered into a subcontract with a division of Northrop Grumman Corporation ("NG"), another private government contractor. (*Id.*) Pursuant to this subcontract, certain NG employees worked on the Messaging Services Contract. (App. 3) The Appellant, James E. Jackson, was employed full-time by NG, and worked on the Messaging Services Contract. (*Id.*) Mr. Jackson, who had been approved for contractor access to Sensitive Compartmented Information (SCI) by NSA Security's Adjudications Division, performed his duties on the Messaging Services Contract within NSA Headquarters. (*Id.*)

NG required Mr. Jackson to submit a timesheet in

electronic form for every two-week pay period to NG. (*Id.*) In those timesheets, Mr. Jackson was required to state the number of hours he had worked during those pay periods on the Messaging Services Contract. (*Id.*) Mr. Jackson received regular paychecks from NG in which he was paid, in part, based on the number of hours he had indicated to NG that he had worked on the Messaging Services Contract for the pay periods in question. (*Id.*)

Mr. Jackson filled out electronic timesheets and submitted them to his employer NG. (*Id.*) Based on the hours that Mr. Jackson claimed in his timesheets to have worked on the Messaging Services Contract, NG periodically invoiced CSC for such hours. (*Id.*) CSC, in turn, periodically invoiced NSA for the hours that Mr. Jackson claimed to have worked on the Messaging Services Contract. (*Id.*) After NSA received invoices from CSC, which included the amounts invoiced for hours Mr. Jackson had reported to NG, NSA paid CSC for such claimed hours at rates that were specified in the Messaging Services Contract. (*Id.*) CSC, in turn, made payments to NG for Mr. Jackson's claimed hours. (*Id.*)

Between September 2004, and January 2007, Mr. Jackson submitted false timesheets to NG claiming that he worked a total of approximately 834 hours more than he had actually worked on the Messaging Services Contract. (App. 4) CSC invoiced NSA for the hours that

Mr. Jackson claimed to have worked on the Messaging Services Contract. (*Id.*) This led to NSA paying CSC for hours not actually worked by Mr. Jackson. (*Id.*)

NSA did not learn of Mr. Jackson's unworked hours until after NSA had already paid CSC for those hours, and after CSC in turn had already paid NG for such hours. (*Id.*) If it had been determined that the terms of the Messaging Services Contract were not being met due to deficiencies related to an employee of NG, NSA's contracting officer would have worked directly with CSC's contracting office to determine how best to address the problem. (*Id.*) If the problem with NG was not then remedied, NSA would have had the option of terminating the contract with CSC or could have demanded repayment from CSC for hours not actually worked by the Defendant. (*Id.*) If an NSA auditor had received an allegation that Mr. Jackson was not working the hours he was claiming in his timesheets, the auditor would have had the authority to obtain timesheets and billing records from CSC and NG relating to Mr. Jackson in order to determine the amount of overpayment, so that NSA could seek to recoup that amount from CSC. (*Id.*)

By the time NSA's Office of Inspector General began its investigation of Mr. Jackson, he was no longer working on the Messaging Services Contract due to a Reduction in Force on the contract in November 2006. (*Id.*)

II. Decisions Below.

On March 11, 2009, the Petitioner, James E. Jackson was indicted on a twenty count indictment in the United States District Court for the District of Maryland. (App. 2) On April 6, 2009, Mr. Jackson filed a Motion to Dismiss the Indictment based on a lack of federal government jurisdiction. (*Id.*) On May 11, 2009, the Court issued a written opinion denying Mr. Jackson's Motion to Dismiss. (*Id.*) On May 28, 2009, and pursuant to a plea agreement with the United States that preserved his right to appeal the jurisdictional issue in this case, Mr. Jackson pled guilty to three counts of the twenty count indictment for violating 18 USC § 1001. (App. 2-3) Specifically, Mr. Jackson pled guilty to three counts involving three pay periods in July and August 2006. (App. 5) For those periods, Mr. Jackson claimed to have worked a total of sixty-two and one-half hours that he did not actually work. (*Id.*) On June 24, 2010, the Fourth Circuit affirmed in a published opinion that the United States of America did have false statement jurisdiction over Mr. Jackson's false timesheets submitted to his employer, the subcontractor on the government contract.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted because this case presents an important question over which the federal appellate courts are divided concerning the United States' jurisdictional reach in prosecuting false statements.

The Fourth Circuit opinion noted the jurisdictional split and firmly decided to side with the circuits expanding the reach of the False Statements Act by finding that jurisdiction existed over Mr. Jackson's false timesheets to his private employer, a subcontractor on a government contract.

The jurisdictional reach of the False Statements Act has not been decided by the Supreme Court, though the Court has previously opined on various aspects of the False Statements Act and its various iterations over the years. In 1984, two cases were decided by the Supreme Court that set out some key parameters for the proper use of the Act by prosecutors. In *United States v. Yermian*, 468 U.S. 63, 74-75 (1984) the Supreme Court held that an individual could be prosecuted under 18 U.S.C. § 1001 even if he or she lacked knowledge of the United States' jurisdiction over the false statement. All that was required was knowledge of the falsity of the statement itself. In that same year, the Supreme Court also decided the one case that has since guided lower courts as to the jurisdictional element of the statute. The test since 1984 has been that the statute will confer

jurisdiction when the agency "has the power to exercise authority in a particular situation" in which the false statement arose. *United States v. Rodgers*, 466 U.S. 475, 480 (1984). "Understood in this way, the phrase 'within the jurisdiction' merely differentiates the official, authorized functions of an agency or department from matters peripheral to the business of that body." *Id.* at 479. Statements that merely concern "matters peripheral to the business of [the agency or department]" are not subject to prosecution under § 1001. *Id.* This guidance has led to an ever-increasing use of the False Statements Act as the federal government takes a more and more omnipresent role in the ordinary lives of the citizenry, and the United States continues to assert that fewer and fewer false statements are matters "peripheral" to the interest of any particular branch of the United States government.

The *Rodgers* court went on to find that "[t]here is no doubt that there exists a 'statutory basis' for the authority of the FBI and the Secret Service over the investigations sparked by respondent Rodgers' false reports. The FBI is authorized 'to detect and prosecute crimes against the United States,' including kidnapping. 28 U.S.C. § 533(1). And the Secret Service is authorized 'to protect the person of the President.' 18 U.S.C. § 3056.... There is, therefore, a 'valid legislative interest in protecting the integrity of [such] official inquiries,' an

interest clearly embraced in, and furthered by, the broad language of § 1001." 466 U.S. at 481-82. No such investigative link existed here for the National Security Agency.

The Fourth Circuit discounted the fact that Mr. Jackson's timesheets were never shown to nor seen by any government agent at the time they were submitted by finding "jurisdiction" over Mr. Jackson in other ways. The Fourth Circuit stated:

> While we think that the executive branch's authority to safeguard federal funds is a sufficient jurisdictional nexus on its own, in this case that link is augmented by other, even more direct controls that the executive branch exercised over Jackson. Specifically, it had the power to revoke Jackson's security clearance and his access to his NSA job site and ultimately to terminate its contract with CSC. Indeed, Jackson was only able to work on this project for NG because he was authorized to do so by NSA Security. Taken together, the power to safeguard federal funds and the ability of the executive branch to effectively terminate Jackson's employment on the Contract provide an ample basis to find federal jurisdiction.

608 F.3d at 198.

Under such a rationale, any individual either

working for or accessing a government building, installation, or possibly even a government computer, could be subject to a false statement act prosecution. While the federal government would not have jurisdiction over a driving while intoxicated charge that occurred in a county municipality, or a false statement made to that local arresting officer pursuant thereto, the federal agency might still ban that individual from working at its installation *as a result of* such a charge. This does not however convey jurisdiction over the prior crime to the federal government. Similarly, the agency's ability to react to Mr. Jackson's act of theft from his employer – all of which occurred outside of the NSA's physical offices – and ban him from his employment site does not confer jurisdiction over the prior criminal act itself. The Fourth Circuit's justification and rationale should not be accepted as the proper jurisdictional reach of this statute, as Congress never intended to enact such a sweeping jurisdictional trap for the unwary.

There is currently a disagreement in the federal appellate courts over how far the False Statement Act's jurisdiction should extend.

In affirming the district court, the Fourth Circuit noted the majority of jurisdictions that condition a false statement to its effect (however indirect) on the public fisc.

[W]e think it plain that the executive branch has the authority (if not the duty) not to pay a false invoice, no matter through how many intermediaries' hands it passes. This constitutes a substantial power to act, and other circuits have long reached essentially similar conclusions. *See United States v. Ross*, 77 F.3d 1525, 1544-45 (7th Cir.1996) ("[T]he jurisdictional nexus between the agency and the entity for purposes of § 1001 stems from the agency's ultimate duty to safeguard the proper spending of federal funds.") (citing, *inter alia*, *United States v. Stanford*, 589 F.2d 285, 297 (7th Cir.1978) ("It is the general rule ... that a statement may concern a matter within the federal jurisdiction described in section 1001, even if the statement is not submitted directly to the federal department or agency involved, and the federal agency involvement is limited to reimbursement of expenditures.")); *United States v. Gibson*, 881 F.2d 318, 323 (6th Cir.1989) ("Protecting itself against being wrongfully overcharged is clearly an 'official, authorized function[ ]' of [a governmental agency], not a 'matter[ ] peripheral to the business of that body.' ") (citing *Rodgers*, 466 U.S. at 479); *United States v. Facchini*, 874 F.2d 638, 643 (9th Cir.1989) (finding jurisdiction when defendants submitted false statements to a state agency, but ultimately "gained ... benefits paid

> out of the federal fisc ..."); *United States v. Wolf*, 645 F.2d 23, 25 (10th Cir.1981) (Jurisdiction exists when "[t]he federal government ... either partially funds the program under which the undeserved benefits are requested or reimburses the agency for its expenditures.") (citing *United States v. Baker*, 626 F.2d 512, 514 n.5 (5th Cir.1980) ("[T]he necessary link between deception of the non-federal agency [or private company] and effect on the federal agency is provided by the federal agency's retention of 'the ultimate authority to see that the federal funds are properly spent.'") (citation omitted)); *United States v. Candella*, 487 F.2d 1223, 1226 (2d Cir.1973) (finding jurisdiction when "[t]he United States became ultimately responsible for paying 100%" of the false invoice). Accordingly, we do not consider the authority to safeguard federal funds to be merely peripheral, but rather an official, authorized function of the executive branch.

608 F.3d at 197-98.

This case however, is remarkably similar to a recent decision by the Ninth Circuit not addressed by the Fourth Circuit opinion, *United States v. Holstrom*, 242 Fed. Appx. 397, 2007 WL 1483892 (9th Cir. 2007). In that case, the government appealed from the dismissal of an indictment under 18 U.S.C. § 1001. Tina Holstrom

was charged with making materially false statements in violation of § 1001 in connection with allegedly false time card entries she submitted to her employer Batelle Memorial Institute, a prime contractor of the United States Department of Energy ("DOE"). In affirming the dismissal of the indictment, the Ninth Circuit stated:

> Nor does the PNNL contract provide DOE with the "power to act" in response to Holstrom's alleged falsification of time cards. Rather, the PNNL contract provided that Batelle was wholly responsible for "the total performance under the contract" including all "disciplinary action with respect to [Batelle's] employees as may be necessary." All employment matters with respect to Holstrom's hiring, investigation and termination were handled by Batelle.

242 Fed. Appx. at 398; 2007 WL 148389, at *2.

Similarly in this case, the NSA did not have any direct contractual authority over Jackson, and indeed Jackson was supervised solely by CSC personnel. NSA could act against NG, and thus Jackson, only by working through CSC, as set out by the contract.

In 1944, the Fifth Circuit addressed a case directly analogous to Mr. Jackson's in *Lowe v. United States*, 141 F.2d 1005 (5th Cir. 1944). The defendant in *Lowe* falsified time cards submitted to his employer, the

Alabama Dry Dock and Shipbuilding Company. At the time the defendant worked for the company, it was involved in building ships for the federal government under contract. Interpreting the scope of the predecessor statute to 18 U.S.C. § 1001, (the 1934 version referred to in *Yermian)* the Fifth Circuit ruled that the defendant's false statements to his employer did not constitute false statements within the jurisdiction of the United States.

In *United States v. Blankenship*, 382 F.3d 1110, 1138 (11th Cir. 2004) the 11th Circuit cited *Lowe* as authority and pointed out that "if § 1001 were interpreted to prohibit any false statement to any private entity whose funds, in whole or in part, happened to originate with the federal government, the results would be shocking." *Id.* at 1137. The court noted that, "under the Government's theory, any teachers in inner-city public schools that receive federal subsidies who take sick days when they're really going to the beach can find themselves spending some quality time with a bright young Assistant United States Attorney." *Id.* at 1138. "While Congress may be constitutionally empowered to criminalize this broad range of conduct, we simply do not believe that it chose to do so, especially not through a statute such as § 1001." *Id.* at 1138.

The Fourth Circuit noted in its opinion that "[i]n both of these cases, the court reversed the defendants'

convictions under § 1001 (or its predecessor in the *Lowe* case), finding a lack of federal jurisdiction. We find both cases distinguishable, however, and to the extent that they cannot be distinguished, we follow the majority of circuits." 608 F.3d at 199. The Fourth Circuit did not address the *Holmstrom* decision.

While there are statutes directly related to false statements in health care matters, 18 U.S.C § 1035, as well as false statements made in claims to the United States, 18 USC § 287, and other specific areas of federal concern, the expanding reach of 18 USC § 1001 will make all other false statement related statutes irrelevant and unnecessary, unless the jurisdictional limits on this statute are set forth more clearly by this Court.

CONCLUSION

For the reasons stated, this Court should issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit. Following review, the judgment should be reversed.

Respectfully submitted,

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APPENDIX

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False Statements Act, 18 U.S.C. § 1001 .....App.18

UNITED STATES COURT OF APPEALS,
For The Fourth Circuit

UNITED STATES of America, Plaintiff-Appellee,
v.
James E. JACKSON, Defendant-Appellant.
No. 09-4753.

Argued May 11, 2010
Decided June 24, 2010
(Published: 608 F.3d 193 (4th Cir. 2010))

Background: Defendant was convicted, upon a conditional plea of guilty, in the United States District Court for the District of Maryland, William M. Nickerson, Senior District Judge, of making false statements on matter within the jurisdiction of the executive, legislative, or judicial branch of the government, arising out of his submission of false timesheets to his employer, a government contractor. Defendant appealed.

Holding: The Court of Appeals, Wilson, J., held that defendant's falsified timesheets fell within jurisdiction of the NSA.

Affirmed.

*194 **ARGUED**: Steven F. Wrobel, Rosenberg, Martin, Greenberg, LLP, Baltimore, Maryland, for Appellant. Jonathan Biran, Office of the United States Attorney, Baltimore, Maryland, for Appellee. **ON BRIEF**: Rod J. Rosenstein, United States Attorney, Baltimore, Maryland, for Appellee.

Before KEENAN, Circuit Judge, HAMILTON, Senior Circuit Judge, and SAMUEL G. WILSON, United States District Judge for the Western District of Virginia, sitting by designation

Affirmed by published opinion. Judge WILSON wrote the opinion, in which Judge KEENAN and Senior Judge HAMILTON joined.

OPINION

WILSON, District Judge:

This is an appeal by James E. Jackson following Jackson's conditional guilty plea pursuant to a plea agreement to three counts of a twenty count indictment alleging violations of 18 U.S.C. § 1001 for making false statements on "a matter within the jurisdiction of the executive, legislative, or judicial branch of the Government." Jackson unsuccessfully moved to dismiss

the indictment in the district court. Jackson's false statements consisted of his submissions of false timesheets to his employer, Northrop Grumman Corporation ("NG"), a subcontractor for the prime contractor, Computer Sciences Corporation ("CSC"), on a time-and-materials contract with the National Security Agency ("NSA"). Jackson contends that these statements were not made in relation to a matter within the jurisdiction of the executive branch because, under the circumstances, NSA had no power to exercise authority. We reject Jackson's argument and affirm.

I.

A grand jury of the United States District Court for the District of Maryland indicted Jackson on twenty counts of violating 18 U.S.C. § 1001 for submitting false timesheets to his employer, which ultimately resulted in the expenditure of NSA funds. Jackson moved to dismiss the indictment pursuant to Federal Rule of Criminal Procedure 12(b)(3) on the ground that it failed to allege an offense over which the United States has jurisdiction. Jackson argued that his submission of "inaccurate timesheets to his employer, which in turn was a subcontractor to a general contractor to a United States agency, were not statements 'within the jurisdiction of any department or agency of the United

States under 18 U.S.C. § 1001.' " (J.A. 12.) The district court denied the motion, finding that the expenditure of NSA's funds was sufficient to invoke NSA's jurisdiction. (J.A. 206.) According to the district court, "the agency's ultimate duty to safeguard the proper spending of federal funds" provides the required jurisdictional nexus. (J.A. 206) (quoting *United States v. Ross*, 77 F.3d 1525, 1544 (7th Cir.1996)). The district court found NSA's "power to exercise authority" further augmented by its authority to revoke Jackson's security clearance, thereby denying him access to the work site (a NSA facility), as well as by its authority to terminate its contract with CSC. (J.A. 207.)

Following the denial of his motion to dismiss, Jackson entered into a plea agreement with the United States that called for Jackson to enter a conditional guilty plea to three of the twenty counts, while preserving his right to contest on appeal the district court's order denying his motion to dismiss the indictment. (J.A. 214.) Jackson then pled guilty pursuant to the plea agreement, and the district court received a stipulation of facts in support of the plea, which the parties further stipulated were not all the facts the government would have proven had the case proceeded to trial on a plea of not guilty.

According to the stipulation, at all relevant times NSA has been a component of the United States Department of Defense, which is part of the executive branch of the United States Government. In or about July 2003, NSA contracted with CSC to obtain certain messaging services. CSC provided those services under the terms of a time-and-materials contract (the "Contract"). CSC entered into a subcontract with a division of NG pursuant to which NG employees worked on the Contract. NG employed Jackson to work on the Contract at NSA headquarters at Fort George G. Meade, Maryland. The NSA Associate Directorate for Security and Counterintelligence ("NSA Security") granted Jackson access to the NSA site.

NG paid Jackson based on timesheets that Jackson submitted electronically every two-weeks. Those timesheets were supposed to reflect the hours that Jackson worked on the Contract during each pay period. Based in part on the hours that Jackson recorded on his timesheets, NG periodically invoiced CSC for the hours worked on the Contract. CSC, in turn, periodically invoiced NSA for the hours that Jackson reported working. NSA paid CSC for the hours, and CSC paid NG, which paid Jackson.

Between September 2004 and January 2007, Jackson

submitted numerous false timesheets to NG claiming that he worked approximately 834 hours more than he actually*196 worked on the Contract. CSC ultimately invoiced NSA for the hours Jackson falsely claimed to have worked and this led to NSA paying CSC for work Jackson did not perform. The government contends that this caused NSA to pay approximately $75,150 for unperformed work. Jackson disputes this amount, but acknowledges that the overpayment was between $30,000 and $70,000.

NSA did not learn of Jackson's unworked hours until after it had already paid CSC for those hours, and after CSC in turn had already paid NG for them. According to the stipulation, if NSA had determined that the terms of the Contract were not being met, NSA's contracting officer would have worked directly with CSC's contracting office to determine how best to address the problem. If CSC failed to remedy the timesheet issue, NSA would have had the option of either terminating the Contract with CSC or demanding repayment from CSC for hours Jackson did not work. If an NSA auditor had received an allegation that Jackson was not working the hours he claimed in his timesheets, the auditor would have had the authority to obtain timesheets and billing records in order to determine the amount of overpayment so that NSA could seek to

recoup that amount from CSC.

By the time NSA's Office of Inspector General began its investigation of Jackson's timesheets, he was no longer working on the Contract due to a "reduction in force." If, at any time while he was still working on the Contract, NSA Security had learned that Jackson had not actually worked all of the hours he had claimed in his timesheets, NSA Security could have suspended or revoked his access to NSA facilities and information. This would have prevented Jackson from performing any additional work on the Contract.

Jackson pled guilty to three counts involving three pay periods in July and August of 2006. For that period, Jackson falsely claimed to have worked a total of sixty-two and a half hours that he did not actually work. NG invoiced CSC for those hours, and CSC in turn invoiced NSA for them.

II.

Jackson argues that NSA was created by executive order, not by statute, and that therefore, it has "no statutory basis" to access his timesheets. It follows, he contends, that absent statutory authority "a key underpinning to the government's rationale is clearly

missing from this case and [the] conviction should be reversed." (Appellant's Brief at 10-11.) We find this reasoning flawed on a number of levels, reject it, and find that Jackson's falsified timesheets, which ultimately were invoiced by CSC to NSA, are matters within the jurisdiction of the executive branch under § 1001.

[1] Section 1001(a) makes it a crime to knowingly and willfully make a materially false, fictitious, or fraudulent statement or representation "in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States." The Supreme Court has held that the "within the jurisdiction" language of the statute "merely differentiates the official, or authorized functions of an agency or department from matters that are peripheral to the business of that body." *United States v. Rodgers*, 466 U.S. 475, 479, (1984). Accordingly, "the term 'jurisdiction' should not be given a narrow or technical meaning for purposes of § 1001." *Id.* at 480. The term refers to the department's or agency's "power to exercise authority in a particular situation," *id.* at 479 and that *197 power need not include the power to make "final or binding determinations." *Id.* at 482.

[2] Before applying that practical, non-technical

standard to the particular situation at hand we note that Jackson's argument, which focuses exclusively on NSA's authority in relation to his falsified timesheets, does not properly frame the issue. In 1996, Congress amended the "jurisdictional" element of § 1001. *See* False Statements Accountability Act of 1996, Pub.L. No. 104-292, 110 Stat. 3459 (codified as amended at 18 U.S.C. § 1001 (2006)). The previous version specified that the matter pertaining to the false statement must be "within the jurisdiction of any department or agency of the United States." The 1996 amendment, however, "broadened the scope of the statute to include any matter 'within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States.'" *United States v. Atalig*, 502 F.3d 1063, 1067 (9th Cir.2007). In light of the amendment, the question of jurisdiction here, when properly framed, is whether Jackson's falsified timesheets "fell within the jurisdiction of the executive branch." *Id.* at 1068. We conclude that they did.

In concluding that Jackson's false timesheets fell within the jurisdiction of the executive branch, we note first that we think it plain that the executive branch has the authority (if not the duty) not to pay a false invoice, no matter through how many intermediaries' hands it passes.[FN1] This constitutes a substantial power to act,

and other circuits have long reached essentially similar conclusions. *See United States v. Ross*, 77 F.3d 1525, 1543 (7th Cir.1996) ("[T]he jurisdictional nexus between the agency and the entity for purposes of § 1001 stems from the agency's ultimate duty to safeguard the proper spending of federal funds.") (citing, *inter alia*, *United States v. Stanford*, 589 F.2d 285, 297 (7th Cir.1978) ("It is the general rule ... that a statement may concern a matter within the federal jurisdiction described in section 1001, even if the statement is not submitted directly to the federal department or agency involved, and the federal agency involvement is limited to reimbursement of expenditures.")); *United States v. Gibson*, 881 F.2d 318, 323 (6th Cir.1989) ("Protecting itself against being wrongfully overcharged is clearly an 'official, authorized function[ ]' of [a governmental agency], not a 'matter[ ] peripheral to the business of that body.' ") (citing *Rodgers*, 466 U.S. at 479, 104 S.Ct. 1942); *United States v. Facchini*, 874 F.2d 638, 643 (9th Cir.1989) (finding jurisdiction when defendants submitted false statements to a state agency, but ultimately "gained ... benefits paid out of the federal fisc ..."); *United States v. Wolf*, 645 F.2d 23, 25 (10th Cir.1981) (Jurisdiction exists when "[t]he federal government ... either partially funds the program under which the undeserved benefits are requested or reimburses the *198 agency for its expenditures.")

(citing *United States v. Baker*, 626 F.2d 512, 514 n. 5 (5th Cir.1980) ("[T]he necessary link between deception of the non-federal agency [or private company] and effect on the federal agency is provided by the federal agency's retention of the ultimate authority to see that the federal funds are properly spent.") (citation omitted)); *United States v. Candella*, 487 F.2d 1223, 1226 (2d Cir.1973) (finding jurisdiction when "[t]he United States became ultimately responsible for paying 100%" of the false invoice). Accordingly, we do not consider the authority to safeguard federal funds to be merely peripheral, but rather an official, authorized function of the executive branch.

> FN1. Jackson cannot do indirectly that which he is prohibited from doing directly. 18 U.S.C. § 2(b) provides that "whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." As we explained in the context of another § 1001 case, "this section is intended 'to impose criminal liability on one who causes an intermediary to commit a criminal act, even though the intermediary who performed the act has no criminal intent and hence is innocent of the substantive crime charged....' " *United States v.*

> *Richeson*, 825 F.2d 17, 20 (4th Cir.1987) (quoting *United States v. Tobon-Builes*, 706 F.2d 1092, 1099 (11th Cir.1983)). We also have recognized that an intermediary theory of liability applies to offenses under 18 U.S.C. § 287, which prohibits the knowing presentation of a false, fictitious, or fraudulent claim to any agency or department of the United States. *See United States v. Blecker*, 657 F.2d 629, 633-34 (4th Cir.1981).

While we think that the executive branch's authority to safeguard federal funds is a sufficient jurisdictional nexus on its own, in this case that link is augmented by other, even more direct controls that the executive branch exercised over Jackson. Specifically, it had the power to revoke Jackson's security clearance and his access to his NSA job site and ultimately to terminate its contract with CSC. Indeed, Jackson was only able to work on this project for NG because he was authorized to do so by NSA Security. Taken together, the power to safeguard federal funds and the ability of the executive branch to effectively terminate Jackson's employment on the Contract provide an ample basis to find federal jurisdiction.

Jackson relies heavily on three cases: *Lowe v. United States*, 141 F.2d 1005 (5th Cir.1944), *United States v.*

Blankenship, 382 F.3d 1110 (11th Cir.2004), and *United States v. Facchini*, 874 F.2d 638 (9th Cir.1989). *Lowe* and *Blankenship*, however, are distinguishable from this case, and *Facchini* actually supports the Court's reasoning here.

In *Lowe*, the defendant was an hourly employee of a ship building company that was contracted by the United States to build ships. The defendant submitted false timesheets to the company, which paid him directly, but the company was ultimately reimbursed for the time by the United States. The *Lowe* court found that "[i]nsofar as the employee was concerned, every aspect of his employment was exactly the same as it would have been had there been no contract with any governmental agency of any kind." *Lowe*, 141 F.2d at 1006. The court also noted that the "contract for reimbursement of payroll payments ... did not designate the payroll department of the company as an agency of the United States, nor did it place that department under the control or supervision of any such agency." *Id.* Accordingly, the court held that "the mere allegation of the existence of the contract providing for reimbursement ... was not sufficient to make [the defendant's] alleged fraudulent misrepresentations to his employer an offense against the United States." *Id.*

In *Blankenship*, the defendants conspired to obtain road construction contracts that were federally mandated to be awarded to "disadvantaged business enterprises" ("DBEs"), that is, small companies owned by women or minorities. In that case, the United States Department of Transportation ("USDOT") gave a grant to the Florida Department of Transportation ("FDOT") for road construction that required at least 12% of the funds be awarded to DBEs. The FDOT, in turn, contracted with a large construction company, which subcontracted with an authorized DBE to perform some of the work. The owner of that DBE, who actually had no employees, then conspired with the owners of a non-DBE authorized company to do the work and receive payments from the primary contractor. To deceive the primary contractor, the defendants created *199 numerous false documents and records, all giving the impression that employees of the DBE were performing the work. Relying heavily on *Lowe*, the court held that those "false statements ... [were not] matters within the jurisdiction of the federal government." *Blankenship*, 382 F.3d at 1136. The court found that the USDOT had no direct control over the defendants, and that all the agency could do once it learned of the false documents was "to pressure the FDOT, under the terms of the FDOT's contract ... into pressuring [the primary contractor] into taking some sort of action." *Id.*

According to the court, "[t]his embarrassingly weak and indirect avenue of recourse demonstrate[d] the USDOT's lack of authority, and hence lack of jurisdiction, over ... the defendants." *Id.*

In both of these cases, the court reversed the defendants' convictions under § 1001 (or its predecessor in the *Lowe* case), finding a lack of federal jurisdiction. We find both cases distinguishable, however, and to the extent that they cannot be distinguished, we follow the majority of circuits.

In *Lowe,* the court highlighted the fact that the defendant's employment was entirely unaffected by the existence of the federal contract. In contrast, here NSA Security had the power to revoke Jackson's clearance (and his access to the work site), terminating his ability to work on the Contract at any time, and NSA had the power to terminate its Contract with CSC (and therefore NG) if it had discovered the fraudulent activity. Consequently, the circumstances here are quite unlike the circumstances in *Lowe* where "every aspect of [the defendant's] employment was exactly the same as it would have been had there been no contract with any governmental agency of any kind." *Lowe,* 141 F.2d at 1006. For similar reasons this case is distinguishable from *Blankenship,* where the USDOT's power to act on

the fraudulent documents submitted by the defendants was, in the words of the *Blankenship* court, "embarrassingly weak and indirect." *Blankenship,* 382 F.3d at 1136. Accordingly, we find neither case directly analogous to the case before this Court.[FN2]

> FN2. We note that, to the extent that *Lowe* is similar to this case, nearly every court to consider it has either distinguished it or rejected it. *See Blankenship,* 382 F.3d at 1145-48 (Black, J., concurring in part and dissenting in part) (explaining that even within the Fifth and Eleventh Circuits, *Lowe* is inconsistently followed, and often distinguished).

Jackson also relies on *United States v. Facchini* in support of his position. His reliance, however, is misplaced. *Facchini* concerns false statements made by defendants to the Oregon Division of Employment to receive unemployment insurance benefits. The Oregon program paid benefits primarily with state funds, but received administrative funds and guidelines from the Department of Labor ("DOL"). The court in that case analyzed two separate groups of defendants: those who received money only from the State of Oregon, and those who received supplemental benefits from the DOL. Though it is true that the court found no jurisdiction as

to the first group because the connection to the federal government was too attenuated, it easily found jurisdiction to exist for the second, namely "because [the defendants'] false statements gained them benefits paid out of the federal fisc...." *Facchini,* 874 F.2d at 643. There the court found, as do we, that "there is a direct relation between the falsity of [the] statements and the [federal government's duty] of certifying the payment of federal money...." *Id.* Therefore, *Facchini* actually supports the conclusion that we reach today.

*200 III.

For the reasons stated, we find that Jackson's false statements on his timesheets, which were transmitted to CSC, and from CSC to NSA, and ultimately paid by NSA, are matters within the jurisdiction of the executive branch under § 1001, and accordingly affirm the decision of the district court.

AFFIRMED.

False Statements Act, 18 U.S.C. § 1001

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully -

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

(b) Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.

(c) With respect to any matter within the jurisdiction of the legislative branch, subsection (a) shall apply only to-

(1) administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or

(2) any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with the applicable rules of the House or Senate.

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